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PRESS RELEASE

**Supreme Court kills Texas tradition of open beaches
on West Galveston**

Open Beaches Act gutted, constitutional amendment and centuries of tradition tossed aside

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AUSTIN — The Texas tradition of guaranteed public access to the beach died today for Galveston's West End with the Supreme Court reaffirming its prior ruling in favor of a California divorce attorney who bought rental properties on the beach.

"It seems that the Open Beaches Act - at least for Galveston's West End - is dead, thanks to the Supreme Court," Texas Land Commissioner Jerry Patterson said. "This is truly a sad day."

Justice Dale Wainwright delivered the court's 5-3 opinion. Justices Debra H. Lehrmann, David Medina and Eva Guzman dissented. Justice Wallace Jefferson did not participate.

Patterson said the ruling ends any future possibility of much-needed beach renourishment projects for Galveston Island's rapidly eroding West End and will make it impossible for the state to step in quickly to clear the beach of debris after the next hurricane demolishes the front row. After hurricanes Ike and Dolly, the General Land Office spent \$43 million to remove debris from the state's beaches and bays.

"This ruling is bad news for Galveston," Patterson said. "It also gives a pretty big club to anyone who wants to challenge the Texas Open Beaches Act anywhere else along the coast."

In 2005, California resident Carole Severance purchased several houses on the beach in Galveston. After Hurricane Rita hit that summer, the General Land Office sent Severance a letter stating her property was on the public beach and subject to removal under the Open Beaches Act. She was later offered up to \$40,000 in public money to move each house off the beach. Instead, Severance sued, claiming the public's right to access the beach violated her constitutional rights.

In 2010, the Texas Supreme Court issued an opinion in the case that called into question the public beach easement, a key provision of the Texas Open Beaches Act. The court ruled that despite centuries of public use, a public beach easement does not

exist on West Galveston Island because the original Republic of Texas land patent from 1840 failed to reserve the public's right to use the beach.

The court stated in today's ruling that even for areas where a public beach easement could be proven by the state, that easement does not "roll" landward and would effectively be extinguished after each new storm event or hurricane that moved the line of vegetation.

The 2011 opinion threw the Texas tradition of public beach access into legal limbo and caused Patterson to cancel a much-needed \$40 million beach renourishment project on West Galveston Island.

The opinion also triggered a robust response from Texans defending the Open Beaches Act that resulted in a rehearing that was ruled on today.

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